

REMARKS

The Official Action mailed March 19, 2003, and the prior art cited and relied upon therein have been carefully reviewed. The claims in the application are now claims 61-83, and these claims define patentable subject matter warranting their allowance. Accordingly, applicants respectfully request favorable reconsideration and allowance.

Claim 1 has been rejected under the second paragraph of Section 112 and claim 13 under the first paragraph of Section 112. Without acquiescing to the propriety of these rejections, they are nevertheless now no longer applicable as these claims (and all the other previously pending claims) have now been deleted. Therefore, these rejections need not be further addressed.

The previously pending claims have all been rejected as either anticipated under Section 102 by Martin '458, or obvious under Section 103 from Martin, or obvious under Section 103 from Martin in view of Gömöri USP 4,915,955 (Gömöri). As all of applicants' pending claims were examined and rejected, applicants understand that the previous restriction has been withdrawn.

All the prior art rejections are respectfully traversed, at least to the extent that they might be deemed to

apply to the new claims, for the reasons pointed out below. As regards the previously pending claims, same have all been cancelled and so applicants need not further address these prior art rejections insofar as they apply to the previous claims.

Claim 61 is a new main claim in Jepson form from which most of the other new claims depend either directly or indirectly. Applicants' invention, as now more focused as it appears in claim 61, calls for the use of a rather specific hydrogen peroxide solution. The pH is specified, the presence of a silver salt in a particular amount is specified, and the presence of phosphoric acid is specified. In addition, claim 61 recites that the solution is free of hydrogen peroxide stabilizers.

Martin is directed to a method of storing potatoes in such a way as to prevent the potatoes from rotting or being subjected to any bacterial, mold or fungus infections. This objective is accomplished by dipping the potatoes in a hydrogen peroxide solution, or storing the potatoes in a hydrogen peroxide environment, or spraying the potatoes with a hydrogen peroxide solution. **As recognized by the examiner, Martin does not disclose the presence of a silver salt.** In addition, Martin also does not specify any particular pH of

the hydrogen peroxide solution and does not disclose the presence of phosphoric acid.

Accordingly, it is clear that Martin alone does not show (Section 102) or make obvious (Section 103) any of applicants' claims.

Gömöri was applied as a secondary reference, it being indicated in the Office Action that Gömöri suggests adding a silver salt to hydrogen peroxide. The PTO therefore concludes that it would have been obvious to the person of ordinary skill in the art at the time the present invention was made to add a silver salt to the Martin composition in view of Gömöri.

However, Gömöri also teaches that the composition must contain an organic acid stabilizer. Thus, the first paragraph under the heading "Summary of the Invention" at column 2, commencing at line 15, of Gömöri states as follows:

The present invention is a stable concentrate, and a method of preparing it and using it, which contains a silver compound, an inorganic acid and **an organic stabilizer**. The concentrate is designed to be admixed with hydrogen peroxide to form a disinfectant. (emphasis added)

Organic acid stabilizers are described at column 2, commencing at line 37.

Applicants' new claims exclude the presence of an organic acid stabilizer. In accordance with the present invention, it has been determined that no organic acid stabilizer is necessary, and this is a non-obvious departure from the teachings of Gömöri.

Stated another way, Gömöri teaches that an organic acid stabilizer is an essential component. The person of ordinary skill in the art, reading Gömöri, and seeking to modify Martin by the teachings of Gömöri, would therefore be strongly led to incorporate an organic acid stabilizer. Applicants have thus flown in the face of Gömöri and have done what Gömöri indicate should not be done. This is the antithesis of obviousness.

For the record, applicants respectfully note that Gömöri must be considered in its entirety, noting for example *In re Mercier*, 185 USPQ 774, 778 (CCPA 1975), where the court stated that "... **all** of the relevant teachings of the cited references must be considered in determining what they fairly teach to one having ordinary skill in the art." Please also see *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965), and *In re Umbricht*, 160 USPQ 15, 19 (CCPA 1968). It therefore would not be proper to ignore Gömöri's teaching away from the present invention.

It therefore follows that applicants' new main claims 61 and 81 would not have been obvious from a consideration together of Martin in view of Gömöri.

All of the subsidiary claims are patentable because they depend from and incorporate the subject matter of the main claims from which they depend. In addition, at least some of these subsidiary claims add additional non-obvious features. In this regard, applicants do not see that any combination of the references would reach the features recited in the dependent portions of claims 65-68.

Insofar as claims 71-73 are concerned, applicants note the application of the Dalmasso et al USP 5,535,667 against certain of the previously pending claims, the Office Action indicating that Dalmasso teaches the use of a hydrogen peroxide vapor, and therefore it would have been obvious to spray using micro droplets. Dalmasso appears to use a hydrogen peroxide vapor at a concentration of 3-4 mg/liter as correctly indicated in the rejection. However, this concentration is a lesser concentration than called for in either claim 72 or 73, i.e. the smallest concentration according to claim 72 would be 8.3 mg/liter, an amount twice that taught by Dalmasso.

With respect to claim 75, applicants do not see that the prior art teaches the use of an amount sufficient to inhibit premature rooting.

With regard to claims 77 and 78, applicants do not see that the prior art shows or teaches what is recited in the dependent portions of these claims.

With respect to claim 79, and reverting back to the Dalmasso patent, applicant does not see what basis the PTO has for assuming that Dalmasso produces micro droplets, when there is no disclosure whatsoever supporting such a conclusion. A vapor is clearly very much different from a fog, the former constituting the gaseous phase and the latter constituting micro droplets suspended in air.

New main claim 81 is patentable for the same reasons as new main claim 61. In addition, applicants do not see that the prior art discloses the treating of plant matter prior to planting or during growing.

Claims 82 and 83 which depend from and incorporate the subject matter of claim 81, and further add features which are believed not to be shown or made obvious by the prior art.

Accordingly, applicants respectfully request favorable consideration of the presently pending claims.

Applicants have indicated above their understanding that the restriction requirement was moot in view of the fact

that all of the previously pending claims were examined. This is so notwithstanding what is stated at the bottom part of page 8 and on page 9 of the Official Action. Thus, applicants do not understand how the requirement can be maintained and yet all the claims be examined, and therefore applicants believe that their assumption made above is reasonable.

However, if applicants have misunderstood and the requirement is still maintained, applicants note that they believe that all the claims fall within the elected Group I, because all are "drawn to a process of treating plant matter and foodstuffs and product thereof" which is set forth as the definition of elected Group I on page 2 of Paper No. 10, the Office Action mailed January 29, 2003.

While the point may now be moot, applicants note the last sentence of the first paragraph under the heading "Response to Amendment" on page 8 of Paper No. 12 which states:

A complete reply to the final rejection must include cancellation of non-elected claims or other appropriate action (37 CFR 1.144). See MPEP §821.01.

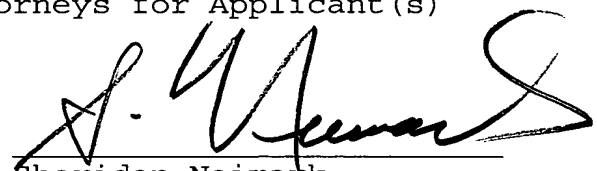
Paper No. 12 is not a final action. Moreover, 37 CFR 1.144 expressly says that a petition from a requirement for restriction "may be deferred until after final action ..., but must be filed not later than appeal."

Applicants believed that the claims as submitted above are narrowly focused and should all be examined and allowed. Accordingly, applicants respectfully request favorable consideration and formal allowance.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By


Sheridan Neimark
Registration No. 20,520

SN:jec

Telephone No.: (202) 628-5197

Facsimile No.: (202) 737-3528

G:\BN\M\MAKH\Ben-Yehuda 1\pto\AMD18JUL03.doc